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FISH & RICHARDSON

601 THIRTEENTH STREET, N.W.
WASHINGTON, D.C. 20005

FISH RICHARDSON & NEAVE
BOSTON
(1915-1969)

FREDERICK P. FISH
(1855-1930)

W.K. RICHARDSON
(1859-1951)

TELEPHONE: 202/783-5070
TELECOPIER: 202/783-2331

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BOSTON OFFICE:
225 FRANKLIN STREET
BOSTON, MASSACHUSETTS 02110-2804
617/542-5070

HOUSTON OFFICE:
ONE RIVERWAY, SUITE 1200
HOUSTON, TEXAS 77056
713/629-5070

December 1, 1992

Our File: 04989/002001

HAND DELIVER

Ms. Donna R. Searcy
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: Comments of Multiplex Technology, Inc.
MM Docket No. 92-260

Dear Ms. Searcy:

Enclosed for filing on behalf of Multiplex Technology, Inc., please find an original and nine (9) copies of comments in the above-captioned Notice of Proposed Rule Making proceeding.

If you have any questions with regard to the enclosed please do not hesitate to contact the undersigned.

Very truly yours,


Terry G. Mahn

TGM/bab
Enclosures

c: Multiplex Technology, Inc.

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Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of the)
Cable Television Consumer)
Protection and Competition)
Act of 1992)

Cable Home Wiring)

MM Docket No. 92-260

COMMENTS OF MULTIPLEX TECHNOLOGY, INC.

Multiplex Technology, Inc. ("Multiplex"), through its attorneys, hereby submits these comments in the above-captioned Notice of Proposed Rule Making.^{1/}

As discussed more fully below, Multiplex favors the development of rules which require the unbundling of cable service from home wiring, and which recognize the rights of cable subscribers to utilize their home wiring for the distribution of alternative video services. Multiplex submits that the Commission's experience with the deregulation of customer premise inside wiring in the telephone industry should provide valuable guidance for the development of similar unbundling rules involving cable television.

^{1/} Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Cable Home Wiring, MM Docket No. 92-260, Notice of Proposed Rule Making, FCC 92-500 (released November 6, 1992) ("NPRM").

Introduction

Multiplex is a leading manufacturer of video distribution products used in cable television and MATV installations. Multiplex markets a family of video products used to combine multiple video signals on a single coaxial cable for the distribution of custom video services throughout residential environments. Multiplex is the principal OEM supplier for several "smart house" technologies currently being introduced to the U.S. market. With Multiplex products, video professionals are able to configure consumer entertainment systems (including off-air video, satellite, cable, VCR and audio services) with closed circuit television, security, and other home automation applications.

In order for consumers to take advantage of Multiplex's unique product offerings, however, they typically require access to, or interface with, the home cable distribution facilities provided by cable operators. Any regulatory requirement or cable operator policy which interferes with the consumer's ability to access and/or combine multiple video sources threatens the viability of Multiplex products and systems. For these reasons, Multiplex has a significant stake in the outcome of this proceeding.

Unbundling of Cable Services and Home Wiring

In response to Congressional directive, this NPRM seeks to develop rules dealing specifically with a cable subscriber's right to ownership of wiring upon termination of service. Multiplex fully agrees with the Commission's suggestion, however, that the NPRM should also consider "alternative approaches" including the broader question of a non-terminated subscriber's right to cable home wiring ownership.^{2/} The House report on the Cable Act of 1992^{3/} specifically contemplates such broader questions and, by inference, invites the Commission to develop unbundling rules by its express recognition of a cable customer's right "to utilize the wiring with an alternative multichannel video delivery system."^{4/}

A rule making which focuses narrowly on subscriber termination rights would, in Multiplex's view, be shortsighted and inadvisable by overlooking the critical underlying issue of cable service unbundling. Moreover, such an inquiry would vest in one class of cable consumers (i.e., terminated subscribers) a valuable right not accorded to other subscribers generally. Multiplex submits that such a distinction among subscribers would

^{2/} NPRM at 2.

^{3/} Cable Television Consumer Protection and Competition Act of 1991, Pub. L. No. 102-385 ("Cable Act of 1992").

^{4/} H.R. Rep. No. 628, 102d Cong., 2d Sess. ("House Report") at 118 (1992).

be discriminatory, arbitrary and constitute an abuse of agency discretion.^{5/}

As the Commission is well aware, user demand for video entertainment and home automation services is on the rise. Over the next decade, the public will witness an explosion of product and service offerings targeted at "smart home" consumers. For these developing technologies to reach their full potential, however, consumers must have access to their in-home video distribution systems. Regulatory policies that tolerate or encourage cable operators to restrict cable home wiring access limit video service competition and burden subscribers with wasteful and redundant video distribution technology.

All too often, cable operators restrict, through "adhesion" contracts, a consumer's right to connect equipment of its choosing to operator-installed cable home wiring. Moreover, operator threats of service termination for "signal theft" deters many consumers from installing their own video distribution equipment and wiring. That Congress may have been aware of this growing problem when it passed the Cable Act of 1992 is reflected in the broad authorization given to the Commission to address the

^{5/} The legal justification for such subscriber discrimination appears nonexistent. If only terminated subscribers can own or fully access their cable wiring under Commission rules, it will mean that subscribers who want such control will first have to terminate their service. After ownership is established a subscriber can then re-subscribe, accomplishing in a legally cumbersome manner what the law should permit in the first place - unbundled access to cable home wiring.

rights of video consumers to "utilize the cable wiring" installed in their residences.

Proposal for Relief

Several interesting parallels can be drawn between cable operators of today and the local telephone companies of the early 1980's just prior to the series of Commission decisions requiring the unbundling and detariffing of customer premise inside wiring.^{6/} Like telephone companies, cable operators have enjoyed a monopoly over both service and in-home distribution systems, the costs of which have been shouldered by the general subscriber/rate payer. Like telephone wiring, video cable is not a technically complex facility over which monopoly control or regulatory authority is necessary to ensure delivery of the underlying service. Indeed, the concept of an operator-provided "point of demarcation" beyond which the service provider has no control, as now exists in the case of telephone wiring, would seem to have a parallel application in the cable television field. For these reasons, the Commission should consider following the same basic approach to cable home wiring deregulation as it did with customer premise inside telephone wiring.

^{6/} For a history of the Commission's efforts to deregulate the installation and maintenance of inside wiring see Detariffing the Installation and Maintenance of Inside Wiring, CC Docket No. 79-105, Second Further Notice of Proposed Rule Making, 5 FCC Rcd 3407 (1990).

Along these lines, the Commission should formulate policies that require cable operators to charge separately for cable service (including, where necessary, decoder equipment) and cable wiring. Subscribers should be given the option of acquiring "embedded cable" -- i.e. cable that has already been depreciated by the operator -- at net book value and should have the option of leasing home cabling currently installed or which may be installed in the future. Further, cable subscribers must be recognized, under Commission rules, as having the right to access and use their home cabling in ways that are, recalling the Commission's landmark Carterphone^{7/} decision, "privately beneficial without being publicly detrimental."^{8/}

Users, for example, must be given the right to attach their own equipment and to "filter off" unwanted cable signals in order to free up distribution space for other video services without facing threats of service termination by cable operators.^{9/} In addition, the Commission should adopt rules that, except in the case of scrambled signals, require cable

^{7/} Use of the Carterphone Device in Message Toll Telephone Service, Docket No. 16942, Carter v. American Telephone and Telegraph Co., et. al., Docket No. 17073, Decision, 13 FCC 2d 420 (1968).

^{8/} Publicly detrimental activities would include those which violate cable operator signal leakage limits or which interfere with the functioning of the operator's distribution system to other cable subscribers.

^{9/} In Multiplex's experience with over thousands of installations, the bandwidth needed for most in-home generated channels is less than 10% of what is provided by the cable operator.

operators to connect "cable-ready" equipment directly to their distribution network.^{10/} That all of this can be accomplished without impairment of cable service or risk of signal misappropriation was recognized recently by the Commission in its adoption of revised cable technical standards.^{11/} Moreover, such a rule would clear up any confusion that surrounds the responsibilities of cable operators, vis-a-vis subscribers, over interpositioned customer equipment.^{12/}

Regarding signal leakage,^{13/} the Commission raises concern over subscriber home wiring ownership and whether it might increase the risks that operators will experience excess leakage from their systems. Multiplex believes, for several reasons, that such concern is unfounded. First, virtually all

^{10/} Multiplex notes that the Cable Act of 1992 requires a report to Congress on this issue within one year but does not preclude a Commission inquiry or rule making in the interim. This proceeding should be expanded to include consideration of such issues.

^{11/} See Cable Television Technical and Operational Requirements, MM Docket No. 91-169, Revision of the Technical and Operational Requirements of Part 76, Cable Television, MM Docket No. 85-38, Report and Order, 7 FCC Rcd 2021 (1992). In this docket the Commission observed that various cable installations do not utilize a "subscriber terminal" and that subscribers, in many cases, provide their own wiring and splitters. Accordingly the Commission adopted rules requiring certain technical measurements to be made at a 100 foot distance from the subscriber's "tap."

^{12/} Interpositioning occurs when the subscriber uses its own wiring between the subscriber tap (or drop cable) and a descrambler provided by the cable operator. Questions involving who should be responsible for a degraded signal level at the output of the descrambler have yet to be addressed by the Commission.

^{13/} NPRM at 6.

subscriber-owned equipment containing active components is governed by strict Commission technical standards controlling interference potential.^{14/} Second, cable operators are only responsible for signal leakage from their systems and not from subscriber equipment unless such equipment emanates into the cable distribution network and causes the system to exceed Commission signal leakage limits outside the subscriber's home. Third and finally, if a problem should arise, cable operators have sufficient authority under Commission rules to discontinue service or force the disconnection of the offending equipment.^{15/}

Conclusion

Based on the foregoing, Multiplex urges the Commission to develop rules that require the unbundling of cable services from home wiring and recognize the rights of subscribers to have access to their cable home wiring. Such rules are necessary to promote competition among video services and to eliminate unfair burdens on consumers who are forced to install redundant video distribution systems. Unbundling will also lead to the more

^{14/} See 47 CFR Part 15 governing signal enumeration from home electronic devices.


^{15/} See 47 CFR § 76.617.

efficient allocation of system costs among cable subscribers without any concomitant threat to cable system service or performance.

December 1, 1992

Respectfully submitted,

MULTIPLEX TECHNOLOGY, INC.



Terry G. Mahn, Esq.
Fish & Richardson
601 Thirteenth, N.W.
5th Floor North
Washington, DC 20005
(202) 783-5070

Its Attorney

MISC9677.DCO